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The Honorable Ben S. Bernanke, Chairman  
Board of Governors of Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Dear Chairman Bernanke:

On behalf of Messick & Weber P.C. and many of our credit union and credit union service organization clients, I want to convey my sincerest concern regarding the Federal Reserve Board's (the "Board") proposed rule on Debit Card Interchange Fees and Routing issued on December 28, 2010 (the "Proposed Rule".) In accordance with the Durbin Amendment to the Dodd Frank Wall Street Reform and Consumer Protection Act (the "Act"), the Board was tasked with prescribing regulations "to establish standards for assessing whether the amount of any interchange transaction fee is reasonable and proportional to the cost incurred by the issuer with respect to the transaction." The Proposed Rule landed far from that mark in several ways that will specifically disadvantage credit unions and other small financial institutions.

First, the Board's survey of "the industry" ignored all debit card issuers and financial institutions with less than \$10 billion in assets. While these small institutions are exempt from the Proposed Rule, the Board, by excluding these institutions from any study, failed to obtain a complete and accurate survey of the industry. Furthermore, by ignoring small institutions, the Board does not have a clear idea of the impact the Proposed Rule will have on credit unions and other small institutions. It is foolish to believe that the Proposed Rule would not effect all segments of the market. The Act exempted these small institutions because Congress understood that smaller institutions would be severely disadvantaged by any regulation on debit interchange, but without further research the Board cannot be sure that the Proposed Rule will not disadvantage these smaller institutions. In fact, we are very certain that the Proposed Rule will disadvantage credit unions and small banks as set forth herein.

Second, the Proposed Rule's solution to Congress' concerns about debit interchange fees is to institute a fixed cap on debit interchange fees. This is an ineffective approach to regulation.

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Debit interchange fees are currently set by the marketplace and the income generated by these fees is proportionately affected by the amount of debit transactions conducted by an issuer. The more transactions an issuer can conduct, the lower the cost to conduct those transactions. By interjecting itself into this marketplace and establishing a fixed cap on debit interchange fees, the Board presupposes that it understands better than anyone else what these transactions should cost to perform. Furthermore, the Board presumes that the costs of these transactions will never change. This approach to regulation will only lead to further regulation and amendment and change that will not provide any stability in the marketplace. Such an environment will likely drive players out of the industry further consolidating the debit card business to the detriment of consumers.

Although this regulated marketplace will only directly affect large institutions, leaving credit unions and small banks the ability to cover their higher costs for debit transactions, it is very difficult to see how this will happen. Most likely, the marketplace for small institutions will be indirectly regulated in the same fashion. The marketplace as a whole will bend to the will of the Proposed Rule leaving credit unions and other small institutions to take a loss on debit transactions. There is no way that a credit union will be able to come to the marketplace with a higher priced product and not be squeezed out by the lower priced product from the large institutions. Credit unions will have to conform to the price cap or be left unable to offer these services to their members. In turn, credit unions will inevitably need to increase fees for other services. Surely, Congress did not intend for debit interchange fees to go down and for checking fees to go up.

Third, the networks are not required to operate two different systems to accommodate the smaller institutions. Some of the bigger networks have stated that they will provide a "two-tiered" system, but there is no obligation to do so. It is not inconceivable for a network or all networks to decide that the cost of the infrastructure to maintain two systems is no longer feasible because it is unlikely that the small institutions will have the volume to justify such a system. The Proposed Rule should require the networks to provide a two-tiered system allowing small institutions the ability to exist within the greater market place. The Proposed Rule should also have strong enforcement provisions to give teeth to this requirement.

Fourth, there are no enforcement provisions to prevent merchants from discriminating against small institutions. Without incentives to do otherwise, merchants will discriminate against debit cards from exempt institutions. They will not accept certain cards or charge a fee for using a card from a small institution. This behavior may be prohibited under the Act, but

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how is the Board or any other enforcement authority going to police such actions and what are the sanctions for such behavior?

Finally, if the Board is set on prescribing a fixed cap on debit interchange fees for large institutions, the Board should also prescribe a fixed floor on debit interchange fees for smaller institutions. Given the effect a price cap will have on the market place and after learning the real costs for debit transactions by credit unions and other small institutions, a fixed floor is the only way to ensure that, as Congress intended, small institutions are unaffected by this Proposed Rule.

Debit transactions have become the fabric of consumer transactions since it is safer and easier for all interested parties. If the Board does not take action to ensure that these financial products can be offered in a cost effective manner by all types of financial institutions, consumers will be forced to deal only with a few large institutions, and this consolidation is never good for the consumer.